

803 KAR 25:075. Attorney fee discount.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS 342.260

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260 requires the Executive Director of the Office of Workers' Claims to prepare administrative regulations as he considers necessary to carry on the work of the office and the work of the administrative law judges. KRS 342.320 requires the administrative law judges to approve the payment of the attorney's fee in any case involving benefits under KRS Chapter 342, and KRS 342.120 provides the method by which an employer or its insurance carrier and the special fund share liabilities for awards or injuries occurring after April 4, 1994. The function of this administrative regulation is to establish a mechanism for crediting the employer, the employer's insurance carrier, and the special fund for the payment of attorneys' fees for injuries occurring and disabilities arising after April 4, 1994, when the claimant elects to repay an attorney's fee through the reduction of weekly benefits.

Section 1. Employer's Calculation. For injuries occurring and disabilities arising on or after April 4, 1994, the employer or the insurance carrier making payment on behalf of the employer shall be entitled to credit for the lump sum value of any attorney's fee paid. The following formula shall be used:

- (1) Employer weeks awarded - weeks paid = remaining weeks.
- (2) $R \text{ weeks} = P \text{ weeks (present worth)}$.
- (3) $EMP \% \text{ Attorney fee} \div P \text{ weeks} = Y \text{ rate}$.
- (4) $R \text{ weeks} \times Y \text{ rate} = \text{employer attorney fee and discount}$.
- (5) $EMP \text{ attorney fee and discount} - EMP \text{ attorney fee} = EMP \text{ discount}$.
- (6) $\text{Weekly rate} - Y \text{ rate} = \text{Employer reduced rate}$.

Section 2. Special Fund Credit. The Department of Labor, Office of Workplace Standards, Division of Workers' Compensation Funds shall calculate its lump sum credit for attorney's fees in cases involving injuries occurring and disabilities arising on or after April 4, 1994, as follows:

- (1) Employer weeks awarded - weeks paid = remaining weeks.
- (2) $R \text{ weeks} = P \text{ weeks (present worth)}$.
- (3) $\text{Total weeks awarded} - \text{weeks paid} = \text{total remaining weeks}$.
- (4) $TR \text{ weeks} = PW \text{ weeks (present worth)}$.
- (5) $PW \text{ weeks} - P \text{ weeks} = SF \text{ (special fund) weeks}$.
- (6) $SF \% \text{ Attorney fee} \div SF \text{ weeks} = SF \text{ rate reduction}$.
- (7) $SF \text{ rate reduction} \times SF \text{ weeks owed} = SF \text{ attorney fee and discount}$.
- (8) $SF \text{ attorney fee and discount} - SF \text{ attorney fee} = SF \text{ discount}$.

Section 3. Procedure. The calculations set forth in Sections 1 and 2 of this administrative regulation shall be completed by the Division of Workers' Compensation Funds and the results forwarded to the other payers, as well as to the plaintiff, when the plaintiff elects to repay an attorney's fee through the reduction of weekly benefits. Any disagreements as to the application of the formula shall be resolved by the administrative law judge upon motion by any party. (21 Ky.R. 2345; Am. 2709; eff. 4-20-95; TAm eff. 8-9-2007.)